

IN SENATE OF THE UNITED STATES.

APRIL 6, 1848.

Submitted, and ordered to be printed.

Mr. UNDERWOOD, from the Committee of Claims, made the following

REPORT:

The Committee of Claims, to whom was referred the petition of John J. Sanchez, report:

John J. Sanchez, as administrator of the estate of Francis R. Sanchez, claims compensation for the value of rails, used as firewood by the troops of the United States, and for certain consequential damages to the cotton crop, in consequence of its exposure; and also, for marching the troops through the field, crushing and trampling upon a "great part of the crop," as is alledged in the memorial. The account filed, consisting of two items—one of \$300, "for burning and destroying a split-rail fence, enclosing twenty acres of cotton," and the other for \$980, "for the destruction of twenty bales of first quality cotton, standing in the field, at \$49 per bale;" thus making the total amount of the claim \$1,280. The account bears date in January, 1836. The account, originally, was made out for \$1,970; but an item for \$200—the value of the cotton seed—and an item for \$490—the loss occasioned by not having seed to plant the crop, for the year 1836—have been withdrawn, leaving the amount at present claimed only \$1,280. The committee would remark, however, that the claim, in either aspect, seems to have received the sanction of the oath of F. R. Sanchez.

The evidence in support of the claim consists of the affidavits of F. R. Sanchez; the certificate of Leigh Read, brigade inspector of Florida militia, given on honor; and the affidavits of Thomas Colding and Woodbridge S. Olmstead. Take the whole proof, and the following facts seem to be established: that F. R. Sanchez owned a field of twenty acres, on which there stood a cotton crop; the field was an oblong, twice the length of its width; that a battalion of Florida militia, commanded by Colonel Parish, on its march to Fort Drane, camped one night in the woods, near the field of Sanchez, and took the rails of his fence for firewood, and to make stakes to drive in the ground, to which their horses might be halted. Next morning the battalion marched through the field, instead of passing round it, trampling the cotton as they passed

through. Sanchez states that "nearly all of one line of his fence rails were burnt," and that the "line of fence destroyed was one-fourth of a mile long," and "that he paid \$1 per hundred for splitting the rails in his woods, and boarded the laborers." Being asked how many rails high the fence was, he answered—not by stating the number of rails to the pannel—but by saying it was five feet high, and well locked. Being asked what would be the cost of hauling and putting up the rails, he answered, that he never made an estimate, and cannot say. Sanchez states that the land in cultivation "would readily yield him, on an average, one bale of cotton to the acre," and that he usually sold his crop at \$49 per bale. He estimates the yield at 350 lbs. to the acre. Colding estimates it at 300 lbs. per acre, at the least. Olmstead states that he paid Sanchez 14 cents per pound for cotton delivered in Newnansville.

We have no information as to the value of the timber out of which the rails were made. From the data furnished, the committee cannot allow the \$300 charged for the destruction of the fence. Conceding that the line of fence was a quarter of a mile long, and that there were twenty rails to each fifteen feet, then, the whole number of rails would be 1,860; and, were we to allow \$5 per hundred for them—which is, probably, double their value—it would only make \$93, instead of \$300. This estimate supposes all the rails upon the line, a quarter of a mile long, were burnt. The language of the claimant is, "nearly all" were burnt; thus leaving it uncertain how many were left. It is very clear that the amount charged for the rails destroyed is extravagant, and ought not to be allowed. But the question arises, whether anything should be paid to the claimant for the trespass committed by the troops upon his fences. The committee are of opinion that the government is not bound to pay the damages occasioned by the wanton acts of trespass committed by the officers and soldiers of the army. They must answer for such acts as other citizens. If the property had been taken by force, for the necessary supply of the troops, because the owner would not sell it, and because supplies could not be obtained by contract, then the government might be placed under some moral obligation to indemnify the officer for the seizure, to the extent of his liability, ascertained in an action of trespass before the civil tribunals. But there is no just principle which can tolerate the officers and soldiers of the army in committing depredations upon private property, and turning over the injured citizen to seek redress from government. It seems, in this case, that the troops were camped in the woods—the inference is, that there was abundant firewood at hand, without consuming the fence rails. We are not informed whether it could not be used, for want of axes to cut it, or whether, to save labor and trouble, the rails were preferred, regardless of the rights of their owner.

The claim of \$980, on account of the destruction of the cotton standing in the field, in the opinion of the committee ought not to be allowed. Any officer who wantonly marches his command through the fields of the citizen, trampling and destroying his crops, deserves the severest treatment before the civil tribunals. In this

case, it is difficult to perceive, however, that the passage of the troops over and through the cotton-field could have produced the destruction of the crop, to the extent complained of. Its exposure by the removal of the fence may have led to its entire destruction, as a consequence; but the committee conceive it was the duty of the owner, after the fence was pulled down and the rails, in part, burnt, to have made exertions to save the crop, either by gathering it, or re-enclosing the whole, or part of it, so far as the rails left would admit. How much of the crop could have been saved by reasonable exertions does not appear. The owner seems to have been content to do nothing, and then to prefer his claim against the government for the full value of the crop, as if he had gathered it, had it ginned, baled, and taken to market. If such a claim was just, under any circumstances, he should, at least, give credit for the labor and expense saved in securing and preparing the crop for market. It does not appear that cotton was worth 14 cents per pound in the year 1836. It is, moreover, worthy of remark, that, ordinarily, the cotton crops in Florida, as the committee are informed, are so far matured that the process of picking out the cotton from the bolls ordinarily commences in August. It is not very reasonable, upon any hypothesis, except disease or indolence, that Sanchez should have left his crop of cotton standing altogether unpicked until January, at which time he complains of its destruction.

The committee recommend the adoption of the following resolution:

Resolved, That the prayer of the petition of John J. Sanchez, administrator, &c., be rejected.

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 struction. The committee recommend the adoption of the following resolu-
 tion: Resolved, That the prayer of the petition of John Sanchez,
 administrator, be, be rejected, and no damages be paid to him.